SENATE BILL 1765

By Herron

AN ACT to amend Tennessee Code Annotated, Title 45, Chapter 15, relative to title pledge loans.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 45, Chapter 15, Part 1, is amended by deleting Part 1 in its entirety and by substituting instead the following language:

45-15-101.

This chapter shall be known and may be cited as the "Tennessee Title Pledge Act".

45-15-102.

The making of title pledge loans vitally affects the general economy of this state and the public interest and welfare of its citizens. It is the policy of this state and the purpose of this chapter to:

(1) Ensure a sound system of making title pledge loans through statewide licensing of title pledge lenders by the department of financial institutions;

(2) Establish licensing requirements;

(3) Provide for the examination and regulation of title pledge lenders by the department of financial institutions;

(4) Ensure financial responsibility to the public; and

(5) Prohibit abusive or predatory practices by title pledge lenders.

45-15-103.

As used in this chapter, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of financial institutions or the commissioner's designated representative;

(2) "Control" means possession, direct or indirect, of the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities by contract or otherwise; provided, that no individual shall be deemed to control a person solely on account of being a director, officer, or employee of such person. For purposes of this subdivision (2), a person who, directly or indirectly, owns, controls, holds the power to vote, or holds proxies representing twenty-five percent (25%) or more of the then outstanding voting securities issued by another person, is presumed to control such other person. For purposes of this subdivision (2), the commissioner may determine whether a person, in fact, controls another person;

(3) "Controlling person" means any person in control of a title pledge lender;

(4) "Department" means the department of financial institutions;

(5) "Month" means thirty (30) days;

(6) "Person" means an individual, any sole proprietorship, general partnership, corporation or limited liability company duly qualified to do business in Tennessee;

(7) "Pledged property" means any titled personal property or personal property certificate of title that is deposited with a title pledge lender in the course of the title pledge lender's business and is the subject of a title pledge agreement or property pledge agreement;

(8) "Pledgor" means the individual or individuals obligated to repay the loan;

(9) "Property pledge agreement" means any written bailment or similar agreement whereby a title pledge lender agrees to make a loan of money to a

pledgor, and the pledgor agrees to the title pledge lender's taking physical possession of unencumbered titled personal property owned by the pledgor, and taking possession of the personal property certificate of title. The pledgor shall have the exclusive right to redeem the titled personal property by repaying the loan of money in full, and by complying with the property pledge agreement. When the titled personal property is redeemed, the title pledge lender shall return the titled personal property and the certificate of title to the pledgor. The property pledge agreement shall provide that, upon failure by the pledgor to redeem the titled personal property at the end of the original thirty-day agreement period, or the end of any subsequent thirty-day renewal or renewals of the agreement period, the title pledge lender shall be allowed to sell or otherwise dispose of the titled personal property;

(10) "Title pledge agreement" means a thirty-day written agreement whereby a title pledge lender agrees to make a loan of money to a pledgor, and the pledgor agrees to give the title pledge lender a security interest in unencumbered titled personal property owned by the pledgor. The pledgor shall agree to the title pledge lender's keeping possession of the certificate of title. The pledgor shall have the exclusive right to redeem the certificate of title by repaying the loan of money in full and by complying with the title pledge agreement. When the certificate of title is redeemed, the title pledge lender shall release the security interest in the titled personal property, and return the personal property certificate of title to the pledgor. The title pledge agreement shall provide that, upon failure by the pledgor to redeem the certificate of title at the end of the original thirty-day agreement period, or at the end of any thirty-day renewal or renewals of the agreement period, the title pledge lender shall be

allowed to take possession of the titled personal property. The title pledge lender shall retain physical possession of the certificate of title for the entire length of the title pledge agreement, but shall not be required to retain physical possession of the titled personal property at any time. A title pledge lender may only hold unencumbered certificates of title for pledge;

(11) "Title pledge lender" means any person engaged in the business of making title pledge agreements or property pledge agreements with pledgors;

(12) "Title pledge office" means the location at which, or premises in which, a title pledge lender regularly conducts business; and

(13) "Titled personal property" means any personal property, the ownership of which is evidenced and delineated by a state-issued certificate of title.

45-15-104.

(a) A title pledge lender licensed pursuant to this chapter has the power to make loans of money on pledges of personal property certificates of title or on pledges of titled personal property in accordance with the provisions of this chapter.

(b) Title pledge lenders licensed pursuant to this chapter shall not have the powers enumerated in this chapter without first complying with the law regulating title pledge agreements and property pledge agreements, but title pledge lenders exercising any of the powers in compliance with this chapter's provisions shall not be deemed in violation of § 47-14-112 or § 47-14- 117.

45-15-105.

(a) No person shall engage in the business of title pledge lending without having first obtained a license. A separate license shall be required for each location from which such business is conducted. Any person engaged in the business of title pledge lending on November 1, 2005, under a license issued by the county clerk, may continue to engage in the business without a license issued by the commissioner, until the commissioner has acted upon the application for a license, if the application is filed by December 31, 2005.

(b) Any loan made without a license is void, in which case the person making the loan forfeits the right to collect any moneys, including principal, interest, and any other fee paid by the pledgor in connection with the title pledge agreement or property pledge agreement. The person making the loan shall return to the pledgor the pledged property, the titled personal property pledged, or the fair market value of such titled personal property, and all principal, interest, and any other fees paid by the pledgor. The pledgor is entitled to receive reasonable attorney's fees and costs in any action brought by a pledgor to recover from the person making the loan, the pledged property, the titled personal property, and the principal, interest and any fees paid by the pledgor.

45-15-106.

(a) To qualify for a license, an applicant shall satisfy the following requirements:

(1) The applicant has a tangible net worth, which comprises tangible assets less liabilities, of not less than seventy-five thousand dollars ($75,000) for each location; and

(2) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification has been met, and for the purpose of investigating compliance with this chapter, the commissioner may review and approve:

(A) The relevant business records and the capital adequacy of the applicant;

(B) The financial responsibility, financial condition, business experience, character, and general fitness of any person who is a director, officer, a shareholder who owns five percent (5%) or more of the applicant, or owns or controls the applicant; and

(C) Any record on the part of the applicant, or any person referred to in subdivision (a)(2)(B), of any criminal activity, any fraud or other act of personal dishonesty, any act, omission or practice that constitutes a breach of a fiduciary duty, or any suspension, removal or administrative action by any agency or department of the United States or any state, from participation in the conduct of any business.

(b) The requirements set forth in subsection (a) are continuing in nature.

(c) Each application for a license shall be in writing and under oath to the commissioner, in a form prescribed by the commissioner, and shall include the following:

(1) The legal name, residence and business address of the applicant, and, if the applicant is a partnership, association, or corporation, of every member, officer, managing employee and director of the applicant;

(2) The location in Tennessee at which the registered officer of the applicant shall be located; and

(3) Other data and information the commissioner may require with respect to the applicant, its directors, trustees, officers, members, managing employees or agents.

(d) Each application for a license shall be accompanied by:

(1) A filing fee, in an amount prescribed by the commissioner by rule, but not to exceed eight hundred dollars ($800), which shall not be subject to refund, but which, if the license is granted, shall constitute the license fee for the first

license year or part of the first license year. The filing fee shall be applicable to each location;

(2) A balance sheet and income statement for the immediately preceding fiscal year end, prepared in accordance with generally accepted accounting principles by a certified public accountant or public accounting firm not affiliated with the applicant. For a newly created entity, the commissioner may accept only a balance sheet prepared by a certified public accountant or public accounting firm not affiliated with the applicant, accompanied by a projected income statement demonstrating that the title pledge lender will have adequate capital after payment of start-up costs; and

(3) A surety bond, issued by an insurer regulated under title 56 and not affiliated with the applicant, in the amount of twenty-five thousand dollars ($25,000) for each location. However, in no event shall the aggregate amount of the surety bond required for a single title pledge lender exceed two hundred thousand dollars ($200,000). In lieu of the surety bond, the applicant shall file an irrevocable letter of credit, in the amount of the surety bond, issued by any federally insured bank, savings bank or credit union not affiliated with the applicant. The surety bond or irrevocable letter of credit shall be in a form satisfactory to the commissioner, and shall be payable to the commissioner for the benefit of any person who is injured pursuant to a title pledge or property pledge transaction by the fraud, misrepresentation, breach of contract, financial failure or violation of any provision of this chapter by a title pledge lender. In the case of a bond, the aggregate liability of the surety, in no event, shall exceed the principal sum of the surety bond. In the case of an irrevocable letter of credit, title pledge lenders shall obtain letters of credit for terms of not less than three (3)

years and renew such letters of credit annually. If the title pledge lender fails to pay a person or the commissioner as required by this chapter, then a person may bring suit against the title pledge lender directly on the surety bond or irrevocable letter of credit in any court of competent jurisdiction, or the commissioner may bring suit in the chancery court of Davidson County, on behalf of such persons, either in one (1) or successive actions. The surety bond or irrevocable letter of credit shall be maintained by the title pledge lender for not less than three (3) years, following the expiration, revocation, suspension, or surrender of the license.

(e) Upon the filing of an application in a form prescribed by the commissioner, accompanied by the fee and documents required in this section, the commissioner shall investigate to ascertain whether the qualifications prescribed by this section have been satisfied. If the commissioner finds that the qualifications have been satisfied, and approves the documents, the commissioner shall issue to the applicant a license to engage in the title pledge lending business in Tennessee. A license issued pursuant to this subsection (e) shall remain in force and effect through the remainder of the fiscal year ending October 31 after the date of issuance of the license, unless earlier surrendered, suspended or revoked pursuant to this chapter.

(f) If the commissioner determines that an applicant is not qualified to receive a license, the commissioner shall notify the applicant in writing that the application has been denied, stating the basis for denial. If the commissioner denies an application, or if the commissioner fails to act on an application within ninety (90) days after the filing of a properly completed application, the applicant may make written demand to the commissioner for a hearing before the commissioner on the question of whether the license should be granted. Any hearing shall be conducted pursuant to the Uniform

Administrative Procedures Act, compiled in title 4, chapter 5. In such hearing, the burden of proving that the applicant is entitled to a license shall be on the applicant. A decision of the commissioner following any hearing on the denial of license is subject to review under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(g) The license shall be kept conspicuously posted in the place of business of the title pledge lender.

(h) The license is not transferable or assignable.

(i) The licensing year shall end on October 31. Each license may be renewed upon application by the license holder showing continued compliance with the requirements of this section and the payment to the commissioner annually, on or before October 1, of each year, a license fee, in an amount prescribed by the commissioner by rule, but not to exceed eight hundred dollars ($800) for each licensed location.

(j) The commissioner may establish a biennial licensing arrangement for the filing of the application for license renewal, but in no case shall the license fee be payable for more than one (1) year at a time.

(k)

(1) A change in control of a title pledge lender shall require thirty-days prior written notice to the commissioner. In the case of a publicly traded corporation, such notification shall be made in writing, within thirty (30) days of a change or acquisition of control of a title pledge lender.

(2) Upon notification of a change in control, the commissioner may require such information as deemed necessary to determine whether an application for license is required. The commissioner may waive the filing of an application, if, in the commissioner's discretion, the change of control does not pose any risk to the interests of the public.

(3) Costs incurred by the commissioner in investigating a change of control notification shall be paid by the person requesting such approval, subject to limitations set forth in § 45-15-108(b).

(4) Whenever control of a title pledge lender is acquired or exercised in violation of this subsection (k), the license of the title pledge lender shall be deemed revoked as of the date of the unlawful acquisition of control. Such title pledge lender, or its controlling person, shall surrender the license to the commissioner on demand.

45-15-107.

(a) The commissioner may, after notice and opportunity for a hearing, suspend or revoke any license, if the commissioner finds that the title pledge lender has knowingly or through lack of due care:

(1) Engaged in conduct of a manner which would warrant the denial of an application;

(2) Refused to permit the commissioner to make any examination authorized by this chapter;

(3) Failed to pay the annual license fee imposed by this chapter, or an examination fee imposed by the commissioner under the authority of this chapter;

(4) Committed any fraud, engaged in any dishonest activities or made any misrepresentations;

(5) Made a false statement in the application for the license or failed to give a true reply to a question in the application;

(6) Demonstrated incompetency or untrustworthiness to act as a title pledge lender; or

(7) Violated any provisions of this chapter or any administrative regulation issued pursuant to this chapter, or has violated any other law in the course of such title pledge lender's dealings as a title pledge lender.

(b) If the reason for revocation or suspension of a title pledge lender's license at any one (1) location is of general application to all locations operated by a title pledge lender, the commissioner may revoke or suspend all licenses issued to a title pledge lender.

(c) A hearing shall be held on written notice given at least twenty (20) days prior to the date of the hearing, and shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Any person or entity that has made a complaint to the Department of Financial Institutions about a title pledge lender shall be provided with written notice of the hearing and shall be provided with the opportunity to participate in the hearing and present evidence related to the title pledge lender’s fitness to maintain its license.

45-15-108.

(a) The commissioner may promulgate reasonable regulations, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the enforcement of this chapter. A copy of any rule or regulation adopted by the commissioner shall be mailed to each license holder at least thirty (30) days before the date the rule or regulation takes effect.

(b) To assure compliance with the provisions of this chapter, the commissioner may examine the relevant business, books and records of any title pledge lender. The commissioner may charge and collect the reasonable and actual expenses for any compliance examination conducted under this chapter.

(c) The commissioner, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, is hereby authorized to examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business which requires a license under this chapter, including all relevant books, records and papers employed by such persons in the transaction of their business, and to summon witnesses and examine them under oath concerning matters relating to the business of such persons, or such other matters as may be relevant to the discovery of violations of this chapter, including, but not limited to, the conduct of business without a license as required under this chapter.

(d) All books and records required to be preserved by this chapter or any regulation of the commissioner, or required by any federal statute, regulation, or regulatory guideline, as applicable to each title pledge lender, shall be preserved and made available to the commissioner as provided in this chapter, for a period of twenty-five (25) months on all rejected applications, and for a period of twenty-four (24) months on loans paid in full. The title pledge lender may cause any or all records at any time in its custody to be reproduced or preserved, by the title pledge lender or by any other person who agrees in writing to submit its operations to the examination of the commissioner, to the extent that such operations directly affect such record-keeping by any microphotographic process, electronic or mechanical data storage technique or any other means. Any such record reproduced or preserved by any such process, technique or means shall have the same force and effect as the original record, and be admitted into evidence equally with the original. All records of the title pledge lending business shall be maintained separately by the title pledge lender from any other business in which the title pledge lender may engage.

(e) Commencing July 1, 2005, the commissioner shall have the authority to have full access to all records of a person engaged in the business of title pledge lending, for the sole purpose of making a written report to the general assembly, no later than February 1, 2006. The scope of the report shall be within the discretion of the commissioner, but shall, at a minimum, include an analysis of the rates and terms of title pledge loans and the reasonableness and appropriateness of the rates and terms.

45-15-109.

(a)

(1) Each title pledge lender shall notify the commissioner fifteen (15) days prior to any change in the principal place of business of a title pledge lender.

(2) Each title pledge lender shall notify the commissioner in writing within fifteen (15) days of any change among the president, chief executive officer, treasurer or chief financial officer, or among the general partners or partners of a title pledge lender.

(b) Within fifteen (15) days of the occurrence of any one (1) of the following events, a title pledge lender shall file a written report with the commissioner describing such event and its expected impact on the activities of the title pledge lender in the state:

(1) The filing for bankruptcy or reorganization by the title pledge lender;

(2) The institution of administrative proceedings, including any revocation or suspension proceedings, against the title pledge lender by any state or governmental authority;

(3) The denial of the opportunity to engage in business by any state or governmental authority;

(4) Any felony indictment of the title pledge lender or any of its officers, directors or principals;

(5) Any felony conviction of the title pledge lender or any of its officers,

directors or principals; and

(6) The institution of any civil lawsuit against the title pledge lender alleging fraud, misrepresentation, deceit, or any other misconduct related to the operation of title pledge businesses either in or outside the state of Tennessee

(7) Such other events as the commissioner may determine and identify by rule.

(c)

(1) Each title pledge lender shall file a report with the commissioner, commencing on October 1, 2007, and every odd-numbered year thereafter, containing the following information:

(A) The names and addresses of persons owning controlling interest in each title pledge lender;

(B) The location of all places of business operated by the title pledge lender and the nature of the business conducted at each location;

(C) The names and addresses of all affiliated entities regulated under this title 45, doing business in this state;

(D) Balance sheets, statements of income and expense, prepared by a certified public accountant or public accounting firm not affiliated with the title pledge lender, and such other statistical information as may be reasonably required by the commissioner, consistent with generally accepted accounting practices, for the purpose of determining the general results of operations under this chapter; and

(E) If the title pledge lender is a corporation, the names and addresses of its officers and directors; if the title pledge lender is a partnership, the names and addresses of the partners; and if the title pledge lender is a limited liability company, the names and addresses of the board of governors of the limited liability company.

(2) If the title pledge lender holds two (2) or more licenses or is affiliated with other title pledge lenders, a composite report may be filed, but may not be required.

(3) All such reports shall be filed in such form as may reasonably be required by the commissioner and shall be sworn to by a responsible officer of the title pledge lender.

(4) The information submitted by title pledge lenders pursuant to this subsection (c) shall be available to any member of the public upon written request, in any form prescribed by the commissioner, within ninety (90) days of the making of such request.

(5) The commissioner shall submit to the governor and general assembly, a biennial analysis and recapitulation of such reports for the preceding calendar year, for the purpose of reflecting the general results of operations under this chapter.

45-15-110.

(a) Every title pledge lender shall keep a consecutively numbered record of each and every title pledge agreement or property pledge agreement executed by the title pledge lender and pledgor. Such record, as well as the title pledge agreement or property pledge agreement itself, shall include the following information:

(1) The make, model, and year of the titled personal property;

(2) The vehicle identification number, or other comparable identification number, along with the license plate number, if applicable, of the titled personal property;

(3) The name, residential address, date of birth, and physical description of the pledgor;

(4) The date the title pledge agreement or the property pledge agreement is executed by the title pledge lender and the pledgor;

(5) The identification number of the photo identification and the type of identification, including the issuing agency, accepted from the pledgor; and

(6) The maturity date of the title pledge agreement or property pledge agreement, which shall be thirty (30) days after the title pledge agreement or property pledge agreement is executed by the title pledge lender and the pledgor.

(b) The following information shall also be printed on the title pledge agreement or property pledge agreement:

(1) The name and physical address of the title pledge office;

(2) In not less than 14-point bold type, the name and address of the department of financial institutions, as well as a telephone number to which consumers may address complaints.

(3) The following statement in not less than 14-point bold type:

(A) THIS LOAN IS NOT INTENDED TO MEET LONG-TERM FINANCIAL NEEDS.

(B) YOU SHOULD USE THIS LOAN ONLY TO MEET SHORT-TERM CASH NEEDS.

(C) YOU WILL BE REQUIRED TO PAY ADDITIONAL INTEREST AND FEES IF YOU RENEW THIS LOAN RATHER THAN PAY THE DEBT IN FULL WHEN DUE.

(D) THIS LOAN IS A HIGHER INTEREST LOAN. YOU SHOULD

CONSIDER WHAT OTHER LOWER COST LOANS MAY BE AVAILABLE TO YOU.

(E) YOU ARE PLACING AT RISK YOUR CONTINUED OWNERSHIP OF THE PERSONAL PROPERTY THAT YOU ARE PLEDGING FOR THIS LOAN, INCLUDING YOUR MOTOR VEHICLE IF THAT IS THE PROPERTY PLEDGED.

(F) IF YOU FAIL TO REPAY THE FULL AMOUNT OF THIS LOAN ON OR BEFORE THE END OF THE MATURITY DATE OR RENEWAL OF THE LOAN, THE TITLE PLEDGE LENDER MAY TAKE POSSESSION OF THE PROPERTY PLEDGED AND SELL THE PROPERTY IN THE MANNER PROVIDED BY LAW.

(G) IF YOU ENTER INTO A TITLE PLEDGE AGREEMENT OR PROPERTY PLEDGE AGREEMENT, YOU HAVE A LEGAL RIGHT OF RESCISSION. THIS MEANS YOU MAY CANCEL YOUR CONTRACT AT NO COST TO YOU BY RETURNING THE MONEY YOU BORROWED BY THE NEXT BUSINESS DAY AFTER THE DATE OF YOUR LOAN.

(H) IF THE TITLE PLEDGE AGREEMENT OR PROPERTY PLEDGE AGREEMENT IS LOST, DESTROYED OR STOLEN, YOU SHOULD IMMEDIATELY SO ADVISE THE TITLE PLEDGE LENDER IN WRITING.

(4) The statement that "The pledgor represents and warrants, to the best of the pledgor's knowledge, that the titled personal property is not stolen and has no liens or encumbrances against it, the pledgor has the right to enter into this transaction and the pledgor will not apply for a duplicate certificate of title while the title pledge agreement or property pledge agreement is in effect."

(c) The pledgor shall sign the title pledge agreement or property pledge agreement and shall be provided with a copy of such agreement. The title pledge agreement or property pledge agreement shall also be signed by the title pledge lender, or the lender's employee or agent. If the pledgor has been issued a social security number, the title pledge lender shall keep on file the social security number of the pledgor. The social security number shall not be printed on the title pledge agreement or property pledge agreement, in order to protect the privacy of the pledgor.

(d) The title pledge lender shall be required to record the lender's security interest in the titled personal property by noting a lien on the certificate of title for all title pledge transactions, but shall not be required to note liens for property pledge transactions in which the title pledge lender retains possession of both the titled personal property and the certificate of title during the entire term of the transaction.

45-15-111.

(a) A title pledge lender shall contract for and receive an effective rate of interest not to exceed two percent (2%) per month; additionally, the title pledge lender may charge, contract for, and receive a customary fee to defray the ordinary costs of operating a title pledge office, including, but not limited to, investigating the title, appraising the titled personal property, insuring the personal property when in the physical possession of the title pledge lender, documenting and closing the title or property pledge transaction, making required reports to local law enforcement officials, for all other services provided by the title pledge lender, advertising, for losses on title pledge or property pledge transactions, salaries, and for all other expenses incurred by the title pledge lender except those in § 45-15- 111(b). Such a fee shall not be deemed interest for any purpose of law, and such fee may equal no more than one fifth (1/5) of the original principal amount of the title pledge agreement or property pledge agreement. This fee may be charged as a one-time fee in conjunction with the making of the title pledge or property pledge agreement, but cannot be charged in conjunction with subsequent renewals.

(b) Title pledge lenders may assess and collect, as reimbursement, a repossession charge not to exceed the actual amount charged by any company or companies, attorney or attorneys and/or contractor or contractors to repossess the titled personal property and deliver such titled personal property to the storage facility of the title pledge lender.

(c) Notwithstanding the provisions of § 45-1-104, or any other law to the contrary, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the department of financial institutions shall promulgate rules requiring each title pledge lender to issue a standardized consumer notification and disclosure form in compliance with federal truth-in-lending laws prior to entering into any property pledge agreement or title pledge agreement wherein the pledged goods will consist of, or include, one (1) or more motor vehicles titled by this or any other state. The required style, content and method of executing the form shall be specifically prescribed by the rules and shall be designed to ensure that the pledgor, prior to entering into such agreement, receives and acknowledges an accurate and complete notification and disclosure of the itemized and total amounts of all interest, fees, charges and other costs that will or potentially could be imposed as a result of such agreement.

45-15-112.

Except as otherwise provided in this chapter, the pledgor, upon presentation of suitable identification shall be entitled to redeem the titled personal property and/or certificate of title described therein upon satisfaction of all outstanding obligations pursuant to the title pledge or property pledge agreement and this chapter.

45-15-113.

(a) Title pledge agreements and property pledge agreements made pursuant to this chapter shall not exceed thirty (30) days in length. However, such agreements may provide for renewals for additional thirty-day periods, which may occur automatically, unless one (1) of the following has occurred:

(1) The pledgor has redeemed the pledged titled personal property or certificate of title by paying all principal, interest, and customary fees due in accordance with the title pledge agreement or property pledge agreement;

(2) The pledgor has surrendered possession, title and all other interest in and to the titled personal property and the certificate of title to the title pledge lender;

(3) The title pledge lender has notified the pledgor in writing that the title pledge agreement or property pledge agreement is not to be renewed; or

(4) Default by pledgor of any obligation pursuant to the title pledge agreement or property pledge agreement.

(b) Each title pledge lender shall furnish the pledgor with a statement at least five (5) days prior to the beginning of any period of renewal of the title pledge agreement. Such statement shall include the agreement number, the annual percentage rate, the monthly rate of interest, the monthly fee rate, the original principal balance of the loan, the current payoff balance of the loan, the amount of all renewal fees, and the amount of any interest, fees or other reimbursements allowed pursuant to § 45-15-111(b) that have accrued since the last statement required by this subsection was issued to the pledgor. The statement shall also include the payment amount required to pay off the title pledge loan in full if such payment is made with cash or certified funds by the end of the title pledge agreement or any renewal thereof, and the exact date through which that payoff balance will be honored. Further, if the title pledge loan is past due, the statement shall also include the number of days past due as of the statement date, the minimum payment required and the exact date by which such minimum payment must be received in order to reinstate the account to current status. Such statement shall also include the telephone number, the normal business hours of operation, and the primary contact person at the office of the title pledge lender. Such statement shall be sent to the pledgor by first class mail, postage prepaid, within five (5) days of the end of the title pledge agreement.

(c) A pledgor has the right to cancel the pledgor's obligation to make payments under a title pledge agreement or property pledge agreement, until the close of the next business day after the day when the pledgor signs a title pledge agreement or property pledge agreement, if the pledgor returns the original check or cash to the location where the loan was originated. For the purpose of this section, "business day" means any day that the title pledge office is open for business.

(d) Notwithstanding any provision of this chapter to the contrary, beginning with the third renewal or continuation and at each successive renewal or continuation thereafter, the pledgor shall be required to make a payment of at least ten percent (10%) of the original principal amount of the title pledge transaction, in addition to interest authorized by this chapter. Interest authorized by this chapter at each successive renewal or continuation shall be calculated on the outstanding principal balance. Principal payments in excess of the ten percent (10%) required principal reduction, shall be credited to the outstanding principal on the day received.

45-15-114.

(a) Upon expiration of a property pledge agreement and the final renewal of the agreement, if any, the title pledge lender shall retain possession of the titled personal property and the certificate of title for at least twenty (20) days. If the pledgor fails to redeem the titled personal property and the certificate of title before the lapse of the twenty-day holding period, the pledgor shall thereby forfeit all right, title and interest in and to the titled personal property to the title pledge lender, who shall thereby acquire an absolute right of title to the titled personal property, and the title pledge lender shall have the right and authority to sell or dispose of the unredeemed pledged property.

(b) The title pledge lender has, upon default by the pledgor of any obligation pursuant to the title pledge agreement, the right to take possession of the titled personal property. In taking possession, the title pledge lender or the lender's agent may proceed without judicial process if this can be done without breach of the peace; or, if necessary, may proceed by action to obtain judicial process. After taking possession of the titled personal property, the title pledge lender shall retain possession of the titled personal property and the certificate of title for a twenty-day holding period. There shall be no further interest or other fees charged to the pledgor from the commencement of the twenty-day holding period.

(1) If, during the twenty-day holding period, the pledgor pays the repossession charge, and redeems the titled personal property and certificate of title, by paying all outstanding principal, interest and fees authorized by this chapter owed by the pledgor to the title pledge lender, the pledgor shall be given possession of the titled personal property and the certificate of title without further charge.

(2) If the pledgor fails to redeem the titled personal property and certificate of title during the twenty-day holding period, then the title pledge lender shall have a period of sixty (60) days in which to sell the titled personal property in a commercially reasonable manner. For purposes of this section, "commercially reasonable" is a sale that would be commercially reasonable

under title 47, chapter 9, part 6. The proceeds of the commercially reasonable sale shall be applied to the principal, interest and all fees authorized by this chapter owed by the pledgor to the title pledge lender, including the actual direct costs of the sale. Any surplus from the sale of the titled personal property shall be remitted to the pledgor after such sale, and shall not be retained by the title pledge lender. The commissioner shall prescribe by rule the manner in which the title pledge lender shall remit any surplus to the pledgor.

(c) If the pledgor loses the title pledge agreement or property pledge agreement or other evidence of the transaction, the pledgor shall not thereby forfeit the right to redeem the pledged property, but may promptly, before the lapse of the redemption date, make affidavit for such loss, describing the pledged property, which affidavit shall, in all respects, replace and be substituted for the lost evidence of the pledge transaction.

45-15-115.

A title pledge lender shall not:

(1) Accept a pledge from a person less than eighteen (18) years of age, or from anyone who appears to be intoxicated;

(2) Make any agreement giving the title pledge lender any recourse against the pledgor, other than the title pledge lender's right to take possession of the titled personal property and certificate of title upon the pledgor's default or failure to redeem, and to sell or otherwise dispose of the titled personal property, in accordance with the provisions of this chapter;

(3) Enter into a title pledge agreement in which the amount of money loaned, when combined with the outstanding balance of other outstanding title pledge agreements the pledgor has with the same lender secured by any single certificate of title, exceeds two thousand five hundred dollars ($2,500), or enter

into a property pledge agreement in which the amount of money loaned exceeds two thousand five hundred dollars ($2,500);

(4) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor under this chapter;

(5) Fail to exercise reasonable care to protect from loss or damage titled personal property or certificate of title in the physical possession of the title pledge lender;

(6) Purchase pledged titled personal property that was repossessed in the operation of the lender's business;

(7) Maintain more than one (1) title pledge office or place of operation for each title pledge lender under each license; provided, however, any such title pledge lender may move from one (1) place of business to another, as permitted in § 45-15-109(a)(1);

(8) Keep open any title pledge office before eight o'clock a.m. (8:00 a.m.), or after six o'clock p.m. (6:00 p.m.), on any day during the year, with the exception of November 25 through December 24 of each year. During such period, a title pledge lender may open such place of business at eight o'clock a.m. (8:00 a.m.), and shall be entitled to close at nine o'clock p.m. (9:00 p.m.). No title pledge lender shall be open on Sunday;

(9) Enter into a pledge agreement, unless the pledgor presents a clear title to titled personal property at the time that the loan is made, and such title is retained, after noting of the lien by the state, in the physical possession of the title pledge lender. If the title pledge lender files a lien against such property without possession of a clear title to such property, the resulting lien shall be void;

(10) Capitalize or add any accrued interest or fee to the original principal of the title pledge agreement or property pledge agreement during any renewal of the agreement;

(11) Sell or otherwise charge for any type of insurance in connection with a title pledge agreement or property pledge agreement. Nothing in this subdivision (11) shall prohibit a title pledge lender from offering a pledgor the option to purchase memberships in automobile clubs or associations, as defined in § 55-18-101; provided, that the title pledge lender informs the pledgor in writing that the membership is optional, that the membership can be purchased elsewhere, and that the purchase of the membership has no bearing on whether the pledgor receives a loan;

(12) Charge a prepayment penalty;

(13) Advertise using the words "interest free loans" or "no finance charges," or engage in any other false or misleading advertising;

(14) Require a pledgor to provide any additional guaranty as a condition of entering into a title pledge agreement;

(15) Use any collection tactics in violation of the federal Fair Debt Collection Practices Act, compiled in 15 U.S.C. § 1692, et seq.;

(16) Renew or otherwise consolidate a title pledge agreement or property pledge agreement with the proceeds of another title pledge agreement or property pledge agreement made by the same title pledge lender;

(17) Use any device or agreement, including agreements with affiliated title pledge lenders, with the intent to obtain greater charges than otherwise would be authorized by this chapter; or

(18) Violate the provisions of this chapter or any rule promulgated

pursuant to this chapter by the commissioner.

45-15-116.

Every title pledge lender licensed under the provisions of this chapter shall provide a safe place for the keeping of the pledged property. The title pledge lender shall have sufficient insurance coverage on the pledged property, in the event of loss or damage, for the benefit of the pledgor to pay the title pledge value of the pledged property as written on the title pledge or property pledge agreement; provided, such personal property is in the physical possession of the title pledge lender. Such insurance policy shall name the commissioner as an additional insured party for the protection and benefit of the pledgor. "Title pledge value," for the purposes of this section, means the amount of money loaned in consideration of the pledged goods as stated on the title pledge or property pledge agreement.

45-15-117.

Any person who intentionally violates any provision of this chapter commits a Class A misdemeanor.

45-15-118.

(a) If, after notice and opportunity for a hearing, the commissioner finds that a person has violated this chapter, or any administrative regulation issued pursuant to this chapter, the commissioner may take any or all of the following actions:

(1) Order the person to cease and desist violating the chapter or any administrative rules issued pursuant to the chapter;

(2) Require the refund of any fees collected by such person in violation of this chapter; and

(3) Order the person to pay the commissioner a civil penalty of not more than one thousand dollars ($1,000) for each transaction in violation of this

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chapter or each day that a violation has occurred and continues.

(b)

(1) The commissioner may enter into consent orders at any time with any person, to resolve any matter arising under this chapter. A consent order shall be signed by the person to whom it is issued, or a duly authorized representative, and shall indicate agreement to the terms contained in the consent order. A consent order need not constitute an admission by any person that any provision of this chapter, or any rule, regulation or order promulgated or issued under this chapter, has been violated, nor need it constitute a finding by the commissioner that such person has violated any provision of this chapter or any rule, regulation or order promulgated or issued under this chapter.

(2) Notwithstanding the issuance of a consent order, the commissioner may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order.

(3) In cases involving extraordinary circumstances requiring immediate action, the commissioner may take any enforcement action authorized by this chapter, without providing the opportunity for a prior hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken that is filed with the commissioner within twenty (20) days after receipt of the notice of the commissioner's emergency action.

(c)

(1) Any person aggrieved by the conduct of a title pledge lender under this chapter, in connection with the title pledge lender's regulated activities, may file a written complaint with the commissioner, who may investigate the complaint.

(2) In the course of the investigation of the complaint, the commissioner may:

(A) Subpoena witnesses;

(B) Administer oaths;

(C) Examine any individual under oath; and

(D) Compel the production of records, books, papers, contracts or other documents relevant to such investigation.

(3) If any person fails to comply with a subpoena of the commissioner under this chapter, or to testify concerning any matter about which the person may be interrogated under this chapter, the commissioner may petition any court of competent jurisdiction for enforcement.

(4) The license of any title pledge lender under this chapter, who fails to comply with a subpoena of the commissioner, may be suspended pending compliance with the subpoena.

(5) The commissioner shall have exclusive administrative power to investigate and enforce any and all complaints filed by any person that are not criminal in nature, which complaint relates to the business of title pledge lending.

(d)

(1) The commissioner, after notice and opportunity for hearing, may censure, suspend for a period not to exceed twelve (12) months, or bar a person from any position of employment, management or control of any title pledge lender, if the commissioner finds that the:

(A) Censure, suspension, or bar is in the public interest and that the person has committed or caused a violation of this chapter or any rule, regulation or order of the commissioner; or

(B) Person has been:

(i) Convicted or pled guilty to, or pled nolo contendere to, any crime; or

(ii) Held liable in any civil action by final judgment, or any administrative judgment by any public agency, if the criminal, civil or administrative judgment involved any offense reasonably related to the qualifications, functions, or duties of a person engaged in the business, in accordance with the provisions of this chapter.

(2) Persons suspended or barred under this subsection (d) are prohibited from participating in any business activity of a title pledge lender and from engaging in any business activity on the premises where a title pledge lender is conducting its business. This subsection (d) shall not be construed to prohibit suspended or barred persons from having their personal transactions processed by a title pledge lender.

(3) This subsection (d) shall apply to any violation, conviction, plea, or judgment on or after November 1, 2005.

45-15-119.

In addition to the administrative remedies provided in the preceding section, any title pledge borrower aggrieved by a violation of any of the provisions of this title by a title pledge lender shall be entitled to bring a civil lawsuit against such title pledge lender in a court of competent jurisdiction within two (2) years of the reasonable date discovery of such violation. Any violation of the section on the part of a title pledge lender shall be deemed a violation of the Tennessee Consumer Protection Act, Tenn. Code Ann. Title 47 Chapter 18, et. seq, and an aggrieved pledgor shall have all remedies available under that title, including treble damages for willful violations of the act and attorney's fees, and costs associated with the bringing of such action. In addition to those remedies provided in the Tennessee Consumer Protection Act, a person injured by a violation of the chapter may recover a quarter of the actual or treble damages or statutory penalty of two thousand dollars ($2,000.00). In addition, a court at its discretion, may award punitive damages separate and apart from treble damages, for violations that are not adequately addressed by an award of treble damages.

45-15-120.

No incorporated municipality, city or taxing district in this state shall enact an ordinance or resolution or promulgate any rules or regulations relating to this chapter. The provisions of any ordinance or resolution or rules or regulations of any municipality, city or taxing district relative to title pledge lending are superseded by the provisions of this chapter.

45-15-120.

The provisions of title 55, chapter 17, shall apply to all sales and transfers of any motor vehicle acquired under the provisions of this chapter.

SECTION 2. This act shall take effect July 1, 2009, the public welfare requiring it.